

House Bill 451 (AS PASSED HOUSE AND SENATE)

By: Representatives Jacobs of the 80th, Lindsey of the 54th, Glanton of the 76th, Willard of the 49th, Weldon of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, so as to adopt the revised Article 7 of the Uniform Commercial Code; to provide for conforming amendments to other provisions of such title; to provide for related matters; to provide for applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Title 11 of the Official Code of Georgia Annotated, relating to the commercial code, is amended by revising Article 7 as follows:

"ARTICLE 7

Part 1

General

11-7-101. Short title.

This article shall be known and may be cited as 'Uniform Commercial Code — Documents of Title.'

11-7-102. Definitions and index of definitions.

~~(1)~~(a) In this article, unless the context otherwise requires:

~~(a)~~(1) 'Bailee' means ~~the~~ a person who ~~that~~ by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

~~(b)~~(2) 'Carrier' means a person that issues a bill of lading.

(3) 'Consignee' means the a person named in a bill of lading to whom which or to whose order the bill promises delivery.

~~(c)~~(4) 'Consignor' means the a person named in a bill of lading as the person from whom which the goods have been received for shipment.

~~(d)~~(5) 'Delivery order' means a written record that contains an order to deliver goods directed to a warehouseman warehouse, carrier, or other person who that in the ordinary course of business issues warehouse receipts or bills of lading.

~~(e)~~(6) 'Document' means document of title as defined in the general definitions in Article 1 of this title (Code Section 11-1-201) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~(f)~~(7) 'Goods' means all things which that are treated as movable for the purpose purposes of a contract of storage or transportation.

~~(g)~~(8) 'Issuer' means a bailee who issues a document of title or, in the case of except that in relation to an unaccepted delivery order, it means the person who orders the possessor of goods to deliver. Issuer The term includes any a person for whom which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that even if the issuer received no did not receive any goods, or that the goods were misdescribed, or that in any other respect the agent or employee violated his the issuer's instructions.

~~(h)~~(9) 'Warehouseman' is a person engaged in the business of storing goods for hire 'Person entitled under the document' means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) 'Sign' means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) 'Shipper' means a person that enters into a contract of transportation with a carrier.

(13) 'Warehouse' means a person engaged in the business of storing goods for hire.

~~(2)(b) Other definitions applying to this article or to specified parts thereof, and the Code sections in which they appear are:~~

~~'Duly negotiate.' Code Section 11-7-501.~~

~~'Person entitled under the document.' Code Section 11-7-403(4).~~

~~(3) Definitions in other articles of this title applying to this article and the Code sections in which they appear are:~~

(1) 'Contract for sale.' Code Section 11-2-106.

~~'Overseas.'~~ Code Section ~~11-2-323.~~

(2) 'Lessee in the ordinary course of business.' Code Section 11-2A-103.

(3) 'Receipt' of goods. Code Section 11-2-103.

~~(4)~~(c) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

11-7-103. **Relation of article to treaty, or statute, ~~tariff, classification, or regulation.~~**

(a) ~~To the extent that~~ Except as otherwise provided in this article, this article is subject to any treaty or statute of the United States, ~~or tariff, classification, or regulation filed or issued pursuant thereto~~ to the extent the treaty or statute is applicable, the provisions of this article are subject thereto.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, a violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

(d) To the extent that there is a conflict between any provisions of the laws of this state regarding electronic transactions and this article, this article governs.

11-7-104. **Negotiable and nonnegotiable ~~warehouse receipt, bill of lading, or other document of title.~~**

~~(1)~~(a) ~~A warehouse receipt, bill of lading, or other~~ Except as otherwise provided in subsection (c) of this Code section, a document of title is negotiable:

(a) ~~If~~ if by its terms the goods are to be delivered to bearer or to the order of a named person; ~~or~~

(b) ~~Where recognized in overseas trade, if it runs to a named person or assigns.~~

~~(2)~~(b) ~~Any other document~~ A document of title other than one described in subsection (a) of this Code section is nonnegotiable. A bill of lading in which it is stated that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

11-7-105. ~~Construction against negative implication~~ Reissuance in alternative medium.

~~(a) The omission from either Part 2 or Part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.~~ Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this Code section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this Code section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

11-7-106. **Control of electronic document of title.**

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this Code section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Part 2

Warehouse Receipts: Special Provisions

11-7-201. **Who Person that may issue a warehouse receipt; storage under government bond.**

~~(1)(a)~~ (a) A warehouse receipt may be issued by any ~~warehouseman~~ warehouse.

~~(2)(b)~~ ~~Where~~ If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as is~~ deemed to be a warehouse receipt even ~~though~~ if issued by a person ~~who~~ that is the owner of the goods and is not a ~~warehouseman~~ warehouse.

11-7-202. **Form of warehouse receipt; ~~essential terms; optional terms~~ effect of omission.**

~~(1)(a)~~ A warehouse receipt need not be in any particular form.

~~(2)(b)~~ Unless a warehouse receipt ~~embodies within its written or printed terms~~ provides for each of the following, the ~~warehouseman~~ warehouse is liable for damages caused by ~~the~~ to a person injured by its omission to a person injured thereby:

~~(a)(1)~~ The A statement of the location of the warehouse facility where the goods are stored;

~~(b)(2)~~ The date of issue of the receipt;

~~(c)(3)~~ The ~~consecutive number~~ unique identification code of the receipt;

~~(d)(4)~~ A statement whether the goods received will be delivered to the bearer, to a specified named person, or to a specified named person or his its order;

~~(e)(5)~~ The rate of storage and handling charges, ~~except that where~~ unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

~~(f)(6)~~ A description of the goods or ~~of~~ the packages containing them;

~~(g)(7)~~ The signature of the ~~warehouseman, which may be made by his authorized~~ warehouse or its agent;

~~(h)(8)~~ If the receipt is issued for goods ~~of which~~ that the ~~warehouseman is owner~~ warehouse owns, either solely₂ or jointly₂ or in common with others, a statement of the fact of ~~such~~ that ownership; and

~~(i)(9)~~ A statement of the amount of advances made and of liabilities incurred for which the ~~warehouseman~~ warehouse claims a lien or security interest, unless ~~(Code Section 11-7-209).~~ If the precise amount of ~~such~~ advances made or ~~of such~~ liabilities incurred is, at the time of the issue of the receipt, is unknown to the ~~warehouseman~~ warehouse or to his its agent ~~who issues it~~ that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof~~ of the advances or liabilities is sufficient.

~~(3)(c)~~ A ~~warehouseman~~ warehouse may insert in his its receipt any ~~other terms which~~ that are not contrary to the provisions of this title and do not impair his its obligation of delivery under ~~(Code Section 11-7-403)~~ or his its duty of care under ~~(Code Section 11-7-204)~~. Any contrary ~~provisions shall be~~ provision is ineffective.

11-7-203. **Liability for nonreceipt or misdescription.**

A party to or purchaser for value in good faith of a document of title₂ other than a bill of lading₂ ~~relying in either case~~ that relies upon the description ~~therein~~ of the goods in the

document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) ~~the~~ The document conspicuously indicates that the issuer does not know whether ~~any~~ all or part or all of the goods in fact were received or conform to the description, ~~as where~~ such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by 'contents, condition, and quality unknown,' 'said to contain,' or ~~the like~~ words of similar import, if such indication ~~be~~ is true; or

(2) ~~the~~ The party or purchaser otherwise has notice of the nonreceipt or misdescription.

11-7-204. **Duty of care; contractual limitation of warehouseman's warehouse's liability.**

(1)(a) A ~~warehouseman~~ warehouse is liable for damages for loss of or injury to the goods caused by ~~his~~ its failure to exercise ~~such~~ care ~~in~~ with regard to ~~them as~~ the goods that a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. ~~but unless~~ Unless otherwise agreed, ~~he~~ the warehouse is not liable for damages ~~which~~ that could not have been avoided by the exercise of ~~such~~ that care.

(2)(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, ~~and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman~~ warehouse shall is not be liable; ~~provided, however, that such liability may on written.~~ Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing such the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods thereunder, in which event covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on such an increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use of the goods.

(3)(c) Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~ commencing actions based on the bailment may be included in the warehouse receipt or ~~tariff~~ storage agreement.

11-7-205. **Title under warehouse receipt defeated in certain cases.**

A buyer in ~~the~~ ordinary course of business of fungible goods sold and delivered by a ~~warehouseman who~~ warehouse that is also in the business of buying and selling such goods

230 takes the goods free of any claim under a warehouse receipt even ~~though it if the receipt~~
 231 is negotiable and has been duly negotiated.

232 11-7-206. **Termination of storage at warehouseman's warehouse's option.**

233 ~~(1)(a)~~ A ~~warehouseman~~ warehouse, by giving notice to the person on
 234 whose account the goods are held and any other person known to claim an interest in the
 235 goods, may require payment of any charges and removal of the goods from the warehouse
 236 at the termination of the period of storage fixed by the document; of title or, if ~~no~~ a period
 237 is not fixed, within a stated period not less than 30 days after the ~~notification~~ warehouse
 238 gives notice. If the goods are not removed before the date specified in the ~~notification~~
 239 notice, the ~~warehouseman~~ warehouse may sell them ~~in accordance with the provisions of~~
 240 ~~the Code section on enforcement of a warehouseman's lien (pursuant to Code~~
 241 ~~Section 11-7-210).~~

242 ~~(2)(b)~~ If a ~~warehouseman~~ warehouse in good faith believes that ~~the~~ goods are about to
 243 deteriorate or decline in value to less than the amount of ~~his~~ its lien within the time
 244 ~~prescribed~~ provided in subsection ~~(1)~~ (a) of this Code section ~~for notification,~~
 245 ~~advertisement, and sale~~ and Code Section 11-7-210, the ~~warehouseman~~ warehouse may
 246 specify in the ~~notification~~ notice given under subsection (a) of this Code section any
 247 reasonable; shorter time for removal of the goods and, ~~in case~~ if the goods are not removed,
 248 may sell them at public sale held not less than one week after a single advertisement or
 249 posting.

250 ~~(3)(c)~~ If, as a result of a quality or condition of the goods of which the ~~warehouseman~~ had
 251 ~~no~~ warehouse did not have notice at the time of deposit, the goods are a hazard to other
 252 property, ~~or to the warehouse facilities, or to other persons,~~ the ~~warehouseman~~ warehouse
 253 may sell the goods at public or private sale without advertisement or posting on reasonable
 254 notification to all persons known to claim an interest in the goods. If the ~~warehouseman~~
 255 warehouse, after a reasonable effort, is unable to sell the goods, ~~he~~ it may dispose of them
 256 in any lawful manner and ~~shall~~ does not incur ~~no~~ liability by reason of ~~such~~ that
 257 disposition.

258 ~~(4)(d)~~ ~~The warehouseman must~~ A warehouse shall deliver the goods to any person entitled
 259 to them under this article upon due demand made at any time ~~prior to~~ before sale or other
 260 disposition under this Code section.

261 ~~(5)(e)~~ ~~The warehouseman~~ A warehouse may satisfy ~~his~~ its lien from the proceeds of any
 262 sale or disposition under this Code section but ~~must~~ shall hold the balance for delivery on
 263 the demand of any person to ~~whom he~~ which the warehouse would have been bound to
 264 deliver the goods.

11-7-207. **Goods ~~must~~ shall be kept separate; fungible goods.**

~~(1)(a)~~ Unless the warehouse receipt ~~otherwise~~ provides otherwise, a ~~warehouseman~~ warehouse ~~must~~ shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, ~~except that~~ different lots of fungible goods may be commingled.

~~(2)(b)~~ ~~Fungible~~ If different lots of fungible goods so are commingled, the goods are owned in common by the persons entitled thereto and the ~~warehouseman~~ warehouse is severally liable to each owner for that owner's share. ~~Where~~ If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts ~~which~~ the ~~warehouseman~~ warehouse has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

11-7-208. **Altered warehouse receipts.**

~~Where~~ If a blank in a negotiable warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the ~~want~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

11-7-209. **Lien of ~~warehouseman~~ warehouse.**

~~(1)(a)~~ A ~~warehouseman~~ warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ~~his~~ its possession for charges for storage or transportation, (including demurrage and terminal charges), insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the ~~warehouseman~~ warehouse also has a lien against ~~him~~ the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for ~~such~~ those charges and expenses, whether or not the other goods have been delivered by the ~~warehouseman~~ warehouse. ~~But~~ However, as against a person to ~~whom~~ which a negotiable warehouse receipt is duly negotiated, a ~~warehouseman's~~ warehouse's lien is limited to charges in an amount or at a rate specified ~~on~~ in the warehouse receipt or, if no charges are so specified, ~~then~~ to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

~~(2)(b)~~ ~~The warehouseman~~ A warehouse may also reserve a security interest against the bailor for ~~a~~ the maximum amount specified on the receipt for charges other than those

specified in subsection ~~(1)~~ (a) of this Code section, such as for money advanced and interest. ~~Such a~~ The security interest is governed by ~~the article on secured transactions~~ (Article 9 of this title).

~~(3)(a)(c)~~ (c) A ~~warehouseman's~~ warehouse's lien for charges and expenses under subsection ~~(1)~~ (a) of this Code section or a security interest under subsection ~~(2)~~ (b) of this Code section is also effective against any person ~~who~~ that so entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ the bailor to a ~~good faith~~ good-faith purchaser for value would have been valid, ~~but~~ However, the lien or security interest is not effective against a person ~~as to whom the document confers no right in the goods covered by it under Code Section 11-7-503~~ that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under Code Section 11-7-403; or

(C) Power of disposition under Code Section 11-2-403, subsection (2) of Code Section 11-2A-304, subsection (2) of Code Section 11-2A-305, Code Section 11-9-320, or subsection (c) of Code Section 11-9-321 or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

~~(b)(d)~~ (d) A ~~warehouseman's~~ warehouse's lien on household goods for charges and expenses in relation to the goods under subsection ~~(1)~~ (a) of this Code section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. ~~Household~~ In this subsection, 'household goods' means furniture, furnishings, and ~~or~~ personal effects used by the depositor in a dwelling.

~~(4)(e)~~ (e) A ~~warehouseman~~ warehouse loses ~~his~~ its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

11-7-210. **Enforcement of ~~warehouseman's~~ warehouse's lien.**

~~(1)(a)~~ (a) Except as provided in subsection ~~(2)~~ (b) of this Code section, a ~~warehouseman's~~ warehouse's lien may be enforced by public or private sale of the goods, ~~in bloc or in parcels~~ in bulk or in packages, at any time or place; and on any terms ~~which~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification ~~must~~ shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the ~~warehouseman~~ warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the warehouseman either~~ The

warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ sells at the price current in ~~such that~~ market at the time of ~~his~~ the sale, or if ~~he has~~ otherwise ~~sold~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold, ~~he has~~ ~~sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

~~(2)(b)~~ A ~~warehouseman's lien~~ warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of ~~his~~ its business, only if the following requirements are satisfied ~~may be enforced only as follows~~:

~~(a)(1)~~ All persons known to claim an interest in the goods ~~must~~ shall be notified.

~~(b)(2)~~ The notification ~~must be delivered in person or sent by registered letter to the last known address of any person to be notified~~.

~~(c)~~ The notification ~~must~~ shall include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~(d)(3)~~ The sale ~~must~~ shall conform to the terms of the notification.

~~(e)(4)~~ The sale ~~must~~ shall be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)(5)~~ After the expiration of the time given in the notification, an advertisement of the sale ~~must~~ shall be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement ~~must~~ shall include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale ~~must~~ shall take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement ~~must~~ shall be posted at least ten days before the sale in not ~~less~~ fewer than six conspicuous places in the neighborhood of the proposed sale.

~~(3)(c)~~ Before any sale pursuant to this Code section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ in complying with this Code section. In that event, the goods ~~must~~ may not be sold; but ~~must~~ shall be retained by the ~~warehouseman~~ warehouse subject to the terms of the receipt and this article.

~~(4)(d)~~ A warehouse ~~The warehouseman~~ may buy at any public sale held pursuant to this Code section.

(5)(e) A purchaser in good faith of goods sold to enforce a ~~warehouseman's~~ warehouse's lien takes the goods free of any rights of persons against ~~whom~~ which the lien was valid, despite ~~the warehouse's noncompliance by the warehouseman with the requirements of this~~ Code section.

(6)(f) A ~~warehouse~~ The warehouseman may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this Code section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

(7)(g) The rights provided by this Code section shall be in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

(8)(h) If ~~Where~~ a lien is on goods stored by a merchant in the course of ~~his~~ its business, the lien may be enforced in accordance with ~~either~~ subsection (1) (a) or (2) (b) of this Code section.

(9)(i) A ~~warehouse~~ The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this Code section and, in case of willful violation, is liable for conversion.

Part 3

Bills of Lading: Special Provisions

11-7-301. Liability for nonreceipt or misdescription; 'said to contain'; 'shipper's weight, load, and count'; improper handling.

(1)(a) A consignee of a nonnegotiable bill ~~who~~ of lading which has given value in good faith, or a holder to ~~whom~~ which a negotiable bill has been duly negotiated, relying ~~in either case~~ upon the description ~~therein~~ of the goods; in the bill or upon the date ~~therein~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~document bill~~ indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as where in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by 'contents or condition of contents of packages unknown,' 'said to contain,' 'shipper's weight, load, and count,' or ~~the like~~ words of similar import, if ~~such~~ that indication ~~be~~ is true.

(2)(b) ~~When~~ If goods are loaded by ~~an~~ the issuer ~~who is a common carrier, of a bill of lading:~~

(1) ~~the~~ The issuer ~~must~~ shall count the packages of goods if ~~package freight shipped in packages~~ and ascertain the kind and quantity if shipped in bulk freight; and

(2) In Words such ~~cases as~~ 'shipper's weight, load, and count' or ~~other words of similar~~ import indicating that the description was made by the shipper are ineffective except as to freight goods concealed by in packages.

~~(3)(c) When~~ If bulk ~~freight is~~ goods are loaded by a shipper ~~who that~~ makes available to the issuer of a bill of lading adequate facilities for weighing ~~such freight, an those goods,~~ the issuer who is a common carrier must shall ascertain the kind and quantity within a reasonable time after receiving the ~~written shipper's~~ request ~~of the shipper~~ to do so. In ~~such cases that case~~ 'shipper's weight' or ~~other words of like purport~~ similar import are ineffective.

~~(4)(d)~~ The issuer of a bill of lading, may by ~~inserting~~ including in the bill the words 'shipper's weight, load, and count' or ~~other words of like purport~~ similar import, may indicate that the goods were loaded by the shipper; and, if ~~such that~~ statement ~~be is~~ true, the issuer ~~shall is~~ not be liable for damages caused by the improper loading. ~~But their~~ However, omission of such words does not imply liability for ~~such~~ damages caused by improper loading.

~~(5)(e) A~~ The shipper ~~shall be deemed to have guaranteed~~ guarantees to ~~the an~~ issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by ~~him; the shipper,~~ and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such those~~ particulars. ~~The This~~ right of ~~the issuer to such~~ indemnity ~~shall in no way~~ does not limit ~~his~~ the issuer's responsibility ~~and or~~ liability under the contract of carriage to any person other than the shipper.

11-7-302. **Through bills of lading and similar documents of title.**

~~(1)(a)~~ The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by ~~persons~~ a person acting as its ~~agents~~ agent or by ~~connecting carriers~~ a performing carrier, is liable to ~~anyone~~ any person entitled to recover on the bill or other document for any breach by ~~such the other persons~~ person or by ~~a connecting the performing~~ carrier of its obligation under the bill or other document. ~~but~~ However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

~~(2)(b) Where~~ If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by ~~persons~~ a person other than the issuer are received by ~~any such that~~ person, ~~he~~ the person is subject, with respect to ~~his~~ its own performance while the goods are in ~~his~~ its possession, to the obligation of the issuer. ~~His~~ The person's obligation is discharged by delivery of the goods to another ~~such~~ person

pursuant to the bill or other document; and does not include liability for breach by any other ~~such persons~~ person or by the issuer.

~~(3)(c)~~ The issuer of ~~such~~ a through bill of lading or other document ~~shall be~~ of title described in subsection (a) of this Code section is entitled to recover from the ~~connecting performing~~ carrier, or ~~such~~ other person in possession of the goods when the breach of the obligation under the bill or other document occurred;

(1) ~~the~~ The amount it may be required to pay to ~~anyone~~ any person entitled to recover on the bill or other document ~~therefor~~ for the breach, as may be evidenced by any receipt, judgment, or transcript ~~thereof~~, of judgment; and

(2) ~~the~~ The amount of any expense reasonably incurred by it ~~the issuer~~ in defending any action ~~brought~~ commenced by ~~anyone~~ any person entitled to recover on the bill or other document ~~therefor~~ for the breach.

11-7-303. **Diversion; reconsignment; change of instructions.**

~~(1)(a)~~ Unless the bill of lading otherwise provides, ~~the~~ a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

~~(a)(1)~~ The holder of a negotiable bill; or

~~(b)(2)~~ The consignor on a nonnegotiable bill, ~~notwithstanding even if the consignee has given~~ contrary instructions ~~from the consignee~~; or

~~(c)(3)~~ The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~(d)(4)~~ The consignee on a nonnegotiable bill, if ~~he~~ the consignee is entitled as against the consignor to dispose of ~~them~~ the goods.

~~(2)(b)~~ Unless ~~such~~ instructions described in subsection (a) of this Code section are ~~noted~~ or included in a negotiable bill of lading, a person to ~~whom~~ which the bill is duly negotiated ~~can~~ may hold the bailee according to the original terms.

11-7-304. **Bills Tangible bills of lading in a set.**

~~(1)(a)~~ Except ~~where~~ as customary in ~~overseas~~ international transportation, a tangible bill of lading ~~must~~ may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

~~(2)(b)~~ If ~~Where~~ a tangible bill of lading is lawfully ~~drawn~~ issued in a set of parts, each of which ~~is numbered~~ contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts ~~constitute~~ constitutes one bill.

478 ~~(3)(c)~~ If ~~Where~~ a tangible negotiable bill of lading is lawfully issued in a set of parts and
 479 different parts are negotiated to different persons, the title of the holder to ~~whom~~ which the
 480 first due negotiation is made prevails as to both the document of title and the goods even
 481 ~~though~~ if any later holder may have received the goods from the carrier in good faith and
 482 discharged the carrier's obligation by ~~surrender of his~~ surrendering its part.

483 ~~(4)(d)~~ A ~~Any person who~~ that negotiates or transfers a single part of a tangible bill of
 484 lading ~~drawn~~ issued in a set is liable to holders of that part as if it were the whole set.

485 ~~(5)(e)~~ The bailee ~~is obliged to~~ shall deliver in accordance with Part 4 of this article against
 486 the first presented part of a tangible bill of lading lawfully drawn in a set. ~~Such delivery~~
 487 Delivery in this manner discharges the bailee's obligation on the whole bill.

488 11-7-305. **Destination bills.**

489 ~~(1)(a)~~ Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier,
 490 ~~may~~ at the request of the consignor, may procure the bill to be issued at destination or at
 491 any other place designated in the request.

492 ~~(2)(b)~~ Upon request of ~~anyone~~ any person entitled as against the carrier to control the
 493 goods while in transit and on surrender of possession or control of any outstanding bill of
 494 lading or other receipt covering such goods, the issuer, subject to Code Section 11-7-105,
 495 may procure a substitute bill to be issued at any place designated in the request.

496 11-7-306. **Altered bills of lading.**

497 An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill
 498 enforceable according to its original tenor.

499 11-7-307. **Lien of carrier.**

500 ~~(1)(a)~~ A carrier has a lien on the goods covered by a bill of lading or on the proceeds
 501 thereof in its possession for charges ~~subsequent to~~ after the date of its the carrier's receipt
 502 of the goods for storage or transportation, (including demurrage and terminal charges), and
 503 for expenses necessary for preservation of the goods incident to their transportation or
 504 reasonably incurred in their sale pursuant to law. ~~But~~ However, against a purchaser for
 505 value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or
 506 the applicable tariffs; or, if no charges are stated, ~~then to~~ a reasonable charge.

507 ~~(2)(b)~~ A lien for charges and expenses under subsection ~~(1)~~ (a) of this Code section on
 508 goods ~~which~~ that the carrier was required by law to receive for transportation is effective
 509 against the consignor or any person entitled to the goods unless the carrier had notice that
 510 the consignor lacked authority to subject the goods to ~~such~~ those charges and expenses.
 511 Any other lien under subsection ~~(1)~~ (a) of this Code section is effective against the

consignor and any person ~~who~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~such~~ authority.

~~(3)(c)~~ A carrier loses ~~his~~ its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

11-7-308. **Enforcement of carrier's lien.**

~~(1)(a)~~ A carrier's lien on goods may be enforced by public or private sale of the goods, in ~~bulk~~ bulk or in ~~parcels~~ packages, at any time or place; and on any terms ~~which~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification ~~must~~ shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different ~~method~~ from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the~~ The carrier ~~either~~ sells the goods in ~~the usual~~ a commercially reasonable manner in any recognized market therefor or if ~~he~~ the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or if ~~he has~~ otherwise ~~sold~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold ~~he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~(2)(b)~~ Before any sale pursuant to this Code section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ in complying with this Code section. In that event, the goods ~~must~~ may not be sold; but ~~must~~ shall be retained by the carrier, subject to the terms of the bill of lading and this article.

~~(3)(c)~~ The carrier may buy at any public sale pursuant to this Code section.

~~(4)(d)~~ A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against ~~whom~~ which the lien was valid, despite the carrier's noncompliance ~~by the carrier~~ with ~~the requirements of~~ this Code section.

~~(5)(e)~~ A The carrier may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this Code section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the carrier would have been bound to deliver the goods.

~~(6)(f)~~ The rights provided by this Code section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

546 ~~(7)(g)~~ A carrier's lien may be enforced ~~in accordance with~~ pursuant to either subsection
 547 ~~(1)(a)~~ of this Code section or the procedure set forth in subsection ~~(2)(b)~~ of Code Section
 548 11-7-210.

549 ~~(8)(h)~~ A ~~The~~ carrier is liable for damages caused by failure to comply with the
 550 requirements for sale under this Code section and, in case of willful violation, is liable for
 551 conversion.

552 11-7-309. **Duty of care; contractual limitation of carrier's liability.**

553 ~~(1)(a)~~ A carrier ~~who~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~must~~
 554 shall exercise the degree of care in relation to the goods which a reasonably careful ~~man~~
 555 person would exercise under ~~like~~ similar circumstances. This subsection does not ~~repeat~~
 556 ~~or change~~ affect any ~~law~~ statute, regulation, or rule of law ~~which~~ that imposes liability upon
 557 a common carrier for damages not caused by its negligence.

558 ~~(2)(b)~~ Damages may be limited by a ~~provision~~ term in the bill of lading or in a
 559 transportation agreement that the carrier's liability ~~shall~~ may not exceed a value stated in
 560 the ~~document~~ bill or transportation agreement if the carrier's rates are dependent upon value
 561 and the consignor ~~by the carrier's tariff~~ is afforded an opportunity to declare a higher value
 562 ~~or a value as lawfully provided in the tariff, or where no tariff is filed he~~ and the consignor
 563 ~~is otherwise~~ advised of such the opportunity, but no such. However, such a limitation is
 564 not effective with respect to the carrier's liability for conversion to its own use.

565 ~~(3)(c)~~ Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~
 566 commencing actions based on the shipment may be included in a bill of lading or ~~tariff a~~
 567 transportation agreement.

Part 4

Warehouse receipts and bills of lading: general obligations.

570 11-7-401. **Irregularities in issue of receipt or bill or conduct of issuer.**

571 The obligations imposed by this article on an issuer apply to a document of title ~~regardless~~
 572 ~~of the fact that~~ even if:

573 ~~(a)(1)~~ The document ~~may~~ does not comply with the requirements of this article or of any
 574 other ~~law~~ statute, rule, or regulation regarding its ~~issue~~ issuance, form, or content; ~~or~~
 575 ~~(b)(2)~~ The issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ its business; ~~or~~
 576 ~~(c)(3)~~ The goods covered by the document were owned by the bailee ~~at the time when~~
 577 the document was issued; or

578 (d)(4) The person issuing the document ~~does not come within the definition of~~
 579 warehouseman if it is not a warehouse but the document purports to be a warehouse
 580 receipt.

581 11-7-402. **Duplicate receipt or bill document of title; overissue.**

582 ~~Neither a~~ A duplicate ~~nor or~~ any other document of title purporting to cover goods already
 583 represented by an outstanding document of the same issuer ~~confers~~ does not confer any
 584 right in the goods, except as provided in the case of tangible bills of lading in a set of parts,
 585 overissue of documents for fungible goods, ~~and~~ substitutes for lost, stolen, or destroyed
 586 documents, or substitute documents issued pursuant to Code Section 11-7-105. ~~But the~~
 587 The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate
 588 document ~~as such~~ by a conspicuous notation ~~on its face~~.

589 11-7-403. **Obligation of ~~warehouseman or carrier~~ bailee to deliver; excuse.**

590 ~~(1)(a)~~ A ~~The~~ bailee ~~must~~ shall deliver the goods to a person entitled under ~~the~~ a document
 591 ~~who~~ of title if the person complies with subsections ~~(2)~~ (b) and ~~(3)~~ (c) of this Code section,
 592 unless and to the extent that the bailee establishes any of the following:

593 ~~(a)~~ (1) Delivery of the goods to a person whose receipt was rightful as against the
 594 claimant;

595 ~~(b)~~ (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not
 596 liable;

597 ~~(c)~~ (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or
 598 on ~~warehouseman's~~ a warehouse's lawful termination of storage;

599 ~~(d)~~ (4) The exercise by a seller of ~~his~~ its right to stop delivery pursuant to ~~the provisions~~
 600 ~~of the article on sales~~ (Code Section 11-2-705) or by a lessor of its right to stop delivery
 601 pursuant to Code Section 11-2A-526;

602 ~~(e)~~ (5) A diversion, reconsignment, or other disposition pursuant to ~~the provisions of this~~
 603 ~~article~~ (Code Section 11-7-303) or tariff regulating such right;

604 ~~(f)~~ (6) Release, satisfaction, or any other ~~fact~~ affording a personal defense against the
 605 claimant; or

606 ~~(g)~~ (7) Any other lawful excuse.

607 ~~(2)~~ (b) A person claiming goods covered by a document of title ~~must~~ shall satisfy the
 608 bailee's lien ~~where~~ if the bailee so requests or ~~where~~ if the bailee is prohibited by law from
 609 delivering the goods until the charges are paid.

610 ~~(3)~~ (c) Unless ~~the~~ a person claiming the goods is ~~one~~ a person against ~~whom~~ which the
 611 document ~~confers no~~ of title does not confer a right under subsection (a) of Code Section
 612 11-7-503(1);

(1) The person claiming under a document shall ~~he must~~ surrender for cancellation or
~~notation~~ possession or control of any outstanding negotiable document covering the
goods for cancellation or indication of partial deliveries; and

~~(2) of partial deliveries any outstanding negotiable document covering the goods, and~~
~~the~~ The bailee must shall cancel the document or conspicuously ~~note~~ indicate in the
document the partial delivery thereon or be the bailee is liable to any person to whom
which the document is duly negotiated.

~~(4) 'Person entitled under the document' means holder in the case of a negotiable~~
~~document, or the person to whom delivery is to be made by the terms of or pursuant to~~
~~written instructions under a nonnegotiable document.~~

11-7-404. **No liability for good faith good-faith delivery pursuant to receipt or bill**
document of title.

A bailee ~~who~~ that in good faith ~~including observance of reasonable commercial standards~~
has received goods and delivered or otherwise disposed of ~~them~~ the goods according to the
terms of the document of title or pursuant to this article is not liable ~~therefor.~~ ~~This rule~~
applies for the goods even though if:

(1) ~~The~~ the person from ~~whom he~~ which the bailee received the goods ~~had no~~ did not
have authority to procure the document or to dispose of the goods and; or

(2) ~~The even though the~~ person to ~~whom he~~ which the bailee delivered the goods ~~had no~~
did not have authority to receive ~~them~~ the goods.

Part 5

Warehouse receipts and bills of lading: negotiation and transfer

11-7-501. **Form of negotiation and requirements of 'due ~~Negotiation~~ negotiation.'**

~~(1)~~(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run ~~A negotiable document of title running to the~~
order of a named person, the document is negotiated by his the named person's
indorsement and delivery. After his the named person's indorsement in blank or to
bearer, any person can may negotiate it the document by delivery alone;

~~(2)(a)~~ ~~A negotiable document of title is also negotiated by delivery alone when by its~~
~~original~~ If the document's original terms it runs run to bearer, it is negotiated by delivery
alone;

~~(b)~~(3) If the document's original terms run ~~When a document running to the order of a~~
named person and it is delivered to him the named person, the effect is the same as if the
document had been negotiated;

~~(3)~~(4) Negotiation of ~~a negotiable~~ the document of title after it has been indorsed to a specified named person requires indorsement by the ~~special indorsee as well as~~ named person and delivery; and:

~~(4)~~(5) A ~~negotiable~~ document of title is 'duly negotiated' ~~when~~ if it is negotiated in the manner stated in this ~~Code section~~ subsection to a holder ~~who~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document;

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated; and

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

~~(5)~~(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

~~(6)~~(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~nor~~ or constitute notice to a purchaser ~~thereof of the bill~~ of any interest of ~~such~~ that person in the goods.

11-7-502. **Rights acquired by due negotiation.**

~~(1)~~(a) Subject to Code ~~Section~~ Sections 11-7-205 and 11-7-503 ~~and to the provisions of Code Section 11-7-205 on fungible goods,~~ a holder to ~~whom~~ which a negotiable document of title has been duly negotiated acquires thereby:

~~(a)~~(1) Title to the document;

~~(b)~~(2) Title to the goods;

~~(c)~~(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~(d)~~(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ the issuer except those arising

under the terms of the document or under this article, but in ~~in~~ the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

~~(2)~~(b) Subject to Code Section 11-7-503, title and rights so acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~such~~ the goods by the bailee; and are not impaired even ~~though the~~ if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty or even though any;

(2) Any person has been deprived of possession of the a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A even though a previous sale or other transfer of the goods or document has been made to a third person.

11-7-503. **Document of title to goods defeated in certain cases.**

~~(1)~~(a) A document of title confers no right in goods against a person ~~who~~ that before issuance of the document had a legal interest or a perfected security interest in ~~them~~ the goods and ~~who neither~~ that did not:

~~(a)~~(1) ~~Delivered or entrusted them~~ Deliver or entrust the goods or any document of title covering ~~them~~ the goods to the bailor or the bailor's nominee with:

(A) actual ~~actual~~ Actual or apparent authority to ship, store, or sell;

(B) or with power ~~Power~~ Power to obtain delivery under ~~this article~~ (Code Section 11-7-403); or

(C) with power ~~Power~~ Power of disposition under ~~this title~~ (Code Sections Section 11-2-403, subsection (2) of Code Section 11-2A-304, subsection (2) of Code Section 11-2A-305, and Code Section 11-9-320), or subsection (c) of Code Section 11-9-321 or other statute or rule of law; ~~nor~~ or

~~(b)~~(2) ~~Acquiesced~~ Acquiesce in the procurement by the bailor or ~~the bailor's~~ its nominee of any document ~~of title~~.

~~(2)~~(b) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ That title may be defeated under Code Section 11-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

~~(3)~~(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a bill issued by the freight forwarder is

719 duly negotiated;~~but~~. However, delivery by the carrier in accordance with Part 4 of this
 720 article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

721 11-7-504. **Rights acquired in the absence of due negotiation; effect of diversion;**
 722 **seller's stoppage of delivery.**

723 ~~(1)~~(a) A transferee of a document of title, whether negotiable or nonnegotiable, to ~~whom~~
 724 which the document has been delivered but not duly negotiated, acquires the title and rights
 725 ~~which his~~ that its transferor had or had actual authority to convey.

726 ~~(2)~~(b) In the case of a transfer of a nonnegotiable document of title, until but not after the
 727 bailee receives ~~notification~~ notice of the transfer, the rights of the transferee may be
 728 defeated:

729 ~~(a)~~(1) By those creditors of the transferor ~~who~~ which could treat the ~~sale~~ transfer as void
 730 under Code Section 11-2-402 or 11-2A-308; ~~or~~

731 ~~(b)~~(2) By a buyer from the transferor in ordinary course of business if the bailee has
 732 delivered the goods to the buyer or received notification of ~~his~~ the buyer's rights; ~~or~~

733 ~~(c)~~(3) By a lessee from the transferor in ordinary course of business if the bailee has
 734 delivered the goods to the lessee or received notification of the lessee's rights; or

735 (4) As against the bailee, by ~~good-faith~~ good-faith dealings of the bailee with the
 736 transferor.

737 ~~(3)~~(c) A diversion or other change of shipping instructions by the consignor in a
 738 nonnegotiable bill of lading which causes the bailee not to deliver the goods to the
 739 consignee defeats the consignee's title to the goods if ~~they~~ the goods have been delivered
 740 to a buyer in ordinary course of business or a lessee in ordinary course of business and, in
 741 any event, defeats the consignee's rights against the bailee.

742 ~~(4)~~(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped
 743 by a seller under Code Section 11-2-705 or a lessor under Code Section 11-2A-526, ~~and~~
 744 subject to the ~~requirement~~ requirements of due notification ~~there provided~~ in those Code
 745 sections. A bailee ~~honoring~~ that honors the seller's or lessor's instructions is entitled to be
 746 indemnified by the seller or lessor against any resulting loss or expense.

747 11-7-505. **Indorser not a guarantor for other parties.**

748 The indorsement of a tangible document of title issued by a bailee does not make the
 749 indorser liable for any default by the bailee or ~~by~~ previous indorsers.

750 11-7-506. **Delivery without indorsement; right to compel indorsement.**

751 The transferee of a negotiable tangible document of title has a specifically enforceable right
752 to have ~~his~~ its transferor supply any necessary indorsement, but the transfer becomes a
753 negotiation only as of the time the indorsement is supplied.

754 11-7-507. **Warranties on negotiation or ~~transfer of receipt or bill~~ delivery of**
755 **document of title.**

756 ~~Where~~ If a person negotiates or ~~transfers~~ delivers a document of title for value, otherwise
757 than as a mere intermediary under Code Section 11-7-508, ~~then~~ unless otherwise agreed,
758 ~~he~~ the transferor, in addition to any warranty made in selling or leasing the goods, warrants
759 to ~~his~~ its immediate purchaser only ~~in addition to any warranty made in selling the goods~~
760 that:

761 ~~(a)~~ (1) The ~~That the~~ document is genuine; and

762 ~~(b)~~ (2) The transferor does not have ~~That he has no~~ knowledge of any fact ~~which~~ that
763 would impair ~~its~~ the document's validity or worth; and

764 ~~(c)~~ (3) The ~~That his~~ negotiation or ~~transfer~~ delivery is rightful and fully effective with
765 respect to the title to the document and the goods it represents.

766 11-7-508. **Warranties of collecting bank as to documents of title.**

767 A collecting bank or other intermediary known to be entrusted with documents of title on
768 behalf of another or with collection of a draft or other claim against delivery of documents
769 warrants by ~~such~~ the delivery of the documents only its own good faith and authority. ~~This~~
770 ~~rule applies even though if the~~ collecting bank or other intermediary has purchased or made
771 advances against the claim or draft to be collected.

772 11-7-509. **~~Receipt or bill: when adequate~~ Adequate compliance with commercial**
773 **contract.**

774 ~~The question whether~~ Whether a document of title is adequate to fulfill the obligations of
775 a contract for sale, a contract for lease, or the conditions of a letter of credit is ~~governed~~
776 determined by the articles on sales (Article 2, 2A, or 5 of this title) and on letters of credit
777 (Article 5 of this title).

778

Part 6

779

Warehouse receipts and bills of lading: miscellaneous provisions

780

11-7-601. **Lost, and missing stolen, or destroyed documents of title.**

781

~~(1)(a)~~ If a document ~~has been~~ of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~such the~~ the order. If the document was negotiable, ~~a court may not order delivery of the goods or the issuance of a substitute document without the claimant must post claimant's posting security approved by the court to indemnify any unless it finds that any person who that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable nonnegotiable, such security the court may be required at the discretion of the court require security. The court may also in its discretion order payment of the bailee's reasonable costs and counsel attorney's fees in any action under this subsection.~~

791

792

~~(2)(b)~~ A bailee ~~who that~~, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby, ~~and if. If the delivery is not in good faith, the bailee is becomes~~ liable for conversion. Delivery in good faith is not conversion if ~~made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who which~~ files a notice of claim within one year after the delivery.

798

799

11-7-602. **Attachment of Judicial process against goods covered by a negotiable document of title.**

800

801

~~Except where the~~ Unless a document of title was originally issued upon delivery of the goods by a person ~~who had no that did not have~~ power to dispose of them, ~~no a~~ lien ~~attaches does not attach~~ by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document be is first surrendered to the bailee or ~~its the document's negotiation is enjoined, and the~~ The bailee ~~shall~~ may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to him or impounded by the bailee or to the court. One who purchases A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

810

11-7-603. **Conflicting claims; interpleader.**

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~he~~ the bailee has ~~had~~ a reasonable time to ascertain the validity of the adverse claims or to bring commence an action ~~to compel all claimants to interplead and may compel such~~ for interpleader;. The bailee may assert an interpleader either in defending an action for nondelivery of the goods; or by original action; ~~whichever is~~ appropriate."

PART II

SECTION 2-1.

Said title is further amended by revising paragraphs (5), (6), (10), (14), (15), (20), (25), (26), (27), (38), and (45) of Code Section 11-1-201, relating to general definitions, as follows:

"(5) 'Bearer' means ~~the~~ a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(6) 'Bill of lading' means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods; ~~and includes an airbill. 'Airbill' means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. The term does not include a warehouse receipt."~~

"(10) 'Conspicuous': ~~A term or clause is conspicuous when it is,~~ with reference to a term, means so written, displayed, or presented that a reasonable person against whom which it is to operate ought to have noticed it. A printed heading in capitals (as: Nonnegotiable Bill of Lading) is conspicuous. Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color. But in a telegram any stated term is 'conspicuous.' Whether a term ~~or clause~~ is 'conspicuous' or not is ~~for~~ a decision ~~by~~ for the court. Conspicuous terms include the following:

- (A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
- (B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language."

"(14) 'Delivery' with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) ~~'Document of title' includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which means a record (a) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the document record and the goods it the record covers and (b) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium."~~

~~"(20) 'Holder,' with respect to a negotiable instrument, means:~~

~~(a) the The person in possession if the of a negotiable instrument that is payable either to bearer or, in the case of an instrument payable to an identified person, if the identified that is the person is in possession. Holder with respect to;~~

~~(b) The person in possession of a negotiable tangible document of title means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession; or~~

~~(c) The person in control of a negotiable electronic document of title."~~

~~"(25) A Subject to subsection (27) of this Code section, a person has 'notice' of a fact when if the person:~~

~~(a) He has Has actual knowledge of it; or~~

~~(b) He has Has received a notice or notification of it; or~~

~~(c) From all the facts and circumstances known to him the person at the time in question, he has reason to know that it exists.~~

A person 'knows' or has 'knowledge' of a fact when ~~he~~ the person has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) A person 'notifies' or 'gives' a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not ~~such other~~ the other person actually comes to know of it. A Subject to subsection (27) of this Code section, a person 'receives' a notice or notification when:

(a) It comes to ~~his~~ that person's attention; or

(b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at ~~any other place~~ another location held out by ~~him~~ that person as the place for receipt of such communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to ~~his~~ the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information."

"(38) 'Send' in connection with ~~any~~ a writing, record, or notice means:

(a) to ~~To~~ deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(b) The receipt of any writing ~~In any other way to cause to be received any record or notice within the time at which it would have arrived if properly sent has the effect of a proper sending."~~

"(45) 'Warehouse receipt' means a receipt document of title issued by a person engaged in the business of storing goods for hire."

SECTION 2-2.

Said title is further amended by revising subsection (3) of Code Section 11-2-103, relating to definitions and index of definitions regarding sales, as follows:

"(3) ~~The~~ 'Control' as provided in Code Section 11-7-106 and the following definitions in other articles of this title apply to this article:

'Check.' Code Section 11-3-104.

'Consignee.' Code Section 11-7-102.

'Consignor.' Code Section 11-7-102.

'Consumer goods.' Code Section 11-9-102.

'Dishonor.' Code Section 11-3-502.

'Draft.' Code Section 11-3-104."

SECTION 2-3.

Said title is further amended by revising subsection (2) of Code Section 11-2-104, relating to definition of financing agency, as follows:

"(2) 'Financing agency' means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. 'Financing agency' includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Code Section 11-2-707)."

SECTION 2-4.

Said title is further amended by revising Code Section 11-2-310, relating to open time for payment or running of credit, as follows:

"11-2-310. **Open time for payment or running of credit; authority to ship under reservation.**

Unless otherwise agreed:

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Code Section 11-2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this Code section then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents regardless of where the goods are to be received or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but ~~postdating~~ post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

SECTION 2-5.

Said title is further amended by revising Code Section 11-2-323, relating to form of bill of lading required in overseas shipment, as follows:

953 "11-2-323. **Form of bill of lading required in overseas shipment; 'overseas.'**

954 (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.
955 & F. or F.O.B. vessel, the seller unless otherwise agreed ~~must~~ shall obtain a negotiable bill
956 of lading stating that the goods have been loaded ~~on~~ in board or, in the case of a term C.I.F.
957 or C. & F., received for shipment.

958 (2) Where in a case within subsection (1) of this Code section a tangible bill of lading has
959 been issued in a set of parts, unless otherwise agreed if the documents are not to be sent
960 from abroad the buyer may demand tender of the full set; otherwise only one part of the bill
961 of lading need be tendered. Even if the agreement expressly requires a full set:

962 (a) Due tender of a single part is acceptable within the provisions of this article on cure
963 of improper delivery (subsection (1) of Code Section 11-2-508); and

964 (b) Even though the full set is demanded, if the documents are sent from abroad the
965 person tendering an incomplete set may nevertheless require payment upon furnishing
966 an indemnity which the buyer in good faith deems adequate.

967 (3) A shipment by water or by air or a contract contemplating such shipment is 'overseas'
968 insofar as by usage of trade or agreement it is subject to the commercial, financing, or
969 shipping practices characteristic of international deep water commerce."

970 SECTION 2-6.

971 Said title is further amended by revising Code Section 11-2-401, relating to passing of title
972 and reservation of security, as follows:

973 "11-2-401. **Passing of title; reservation for security; limited application of this Code**
974 **section.**

975 Each provision of this article with regard to the rights, obligations, and remedies of the
976 seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods
977 except where the provision refers to such title. Insofar as situations are not covered by the
978 other provisions of this article and matters concerning title become material the following
979 rules apply:

980 (1) Title to goods cannot pass under a contract for sale prior to their identification to the
981 contract (Code Section 11-2-501), and unless otherwise explicitly agreed the buyer
982 acquires by their identification a special property as limited by this title. Any retention or
983 reservation by the seller of the title (property) in goods shipped or delivered to the buyer
984 is limited in effect to a reservation of a security interest. Subject to these provisions and
985 to the provisions of the article on secured transactions (Article 9 of this title), title to goods
986 passes from the seller to the buyer in any manner and on any conditions explicitly agreed
987 on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such reversion occurs by operation of law and is not a 'sale.'

SECTION 2-7.

Said title is further amended by revising subsections (4) and (5) of Code Section 11-2-503, relating to manner of seller's tender of delivery, as follows:

"(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 of this title receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

- 1024 (a) He ~~must~~ or she shall tender all such documents in correct form, except as provided
1025 in this article with respect to bills of lading in a set (subsection (2) of Code Section
1026 11-2-323); and
- 1027 (b) Tender through customary banking channels is sufficient and dishonor of a draft
1028 accompanying or associated with the documents constitutes nonacceptance or rejection."

1029 SECTION 2-8.

1030 Said title is further amended by revising Code Section 11-2-505, relating to seller's shipment
1031 under reservation, as follows:

1032 "11-2-505. **Seller's shipment under reservation.**

1033 (1) Where the seller has identified goods to the contract by or before shipment:

1034 (a) His or her procurement of a negotiable bill of lading to his or her own order or
1035 otherwise reserves in him or her a security interest in the goods. His or her procurement
1036 of the bill to the order of a financing agency or of the buyer indicates in addition only the
1037 seller's expectation of transferring that interest to the person named.

1038 (b) A nonnegotiable bill of lading to himself or herself or his or her nominee reserves
1039 possession of the goods as security but except in a case of conditional delivery
1040 (subsection (2) of Code Section 11-2-507) a nonnegotiable bill of lading naming the
1041 buyer as consignee reserves no security interest even though the seller retains possession
1042 or control of the bill of lading.

1043 (2) When shipment by the seller with reservation of a security interest is in violation of the
1044 contract for sale it constitutes an improper contract for transportation within Code Section
1045 11-2-504 but impairs neither the rights given to the buyer by shipment and identification
1046 of the goods to the contract nor the seller's powers as a holder of a negotiable document of
1047 title."

1048 SECTION 2-9.

1049 Said title is further amended by revising subsection (2) of Code Section 11-2-506, relating
1050 to rights of financing agency, as follows:

1051 "(2) The right to reimbursement of a financing agency which has in good faith honored or
1052 purchased the draft under commitment to or authority from the buyer is not impaired by
1053 subsequent discovery of defects with reference to any relevant document which was
1054 apparently regular ~~on its face~~."

1055 SECTION 2-10.

1056 Said title is further amended by revising subsection (2) of Code Section 11-2-509, relating
1057 to risk of loss in the absence of breach, as follows:

1058 "(2) Where the goods are held by a bailee to be delivered without being moved, the risk
1059 of loss passes to the buyer:
1060 (a) On his or her receipt of possession or control of a negotiable document of title
1061 covering the goods; or
1062 (b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or
1063 (c) After his or her receipt of possession or control of a nonnegotiable document of title
1064 or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Code
1065 Section 11-2-503."

1066 SECTION 2-11.

1067 Said title is further amended by revising subsection (2) of Code Section 11-2-605, relating
1068 to waiver of buyer's objections by failure to particularize, as follows:
1069 "(2) Payment against documents made without reservation of rights precludes recovery of
1070 the payment for defects apparent ~~on the face of~~ in the documents."

1071 SECTION 2-12.

1072 Said title is further amended by revising subsections (2) and (3) of Code Section 11-2-705,
1073 relating to seller's stoppage of delivery in transit or otherwise, as follows:
1074 "(2) As against such buyer the seller may stop delivery until:
1075 (a) Receipt of the goods by the buyer; or
1076 (b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the
1077 bailee holds the goods for the buyer; or
1078 (c) Such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~
1079 a warehouse; or
1080 (d) Negotiation to the buyer of any negotiable document of title covering the goods.
1081 (3)(a) To stop delivery the seller ~~must~~ shall so notify as to enable the bailee by
1082 reasonable diligence to prevent delivery of the goods.
1083 (b) After such notification the bailee ~~must~~ shall hold and deliver the goods according to
1084 the directions of the seller but the seller is liable to the bailee for any ensuing charges or
1085 damages.
1086 (c) If a negotiable document of title has been issued for goods the bailee is not obliged
1087 to obey a notification to stop until surrender of possession or control of the document.
1088 (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a
1089 notification to stop received from a person other than the consignor."

SECTION 2-13.

Said title is further amended by revising paragraphs (a) and (o) of subsection (1) of Code Section 11-2A-103, relating to definitions and index of definitions relating to leases, as follows:

"(a) 'Buyer in ordinary course of business' means a person who, in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre-existing contract for sale, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt."

"(o) 'Lessee in ordinary course of business' means a person who, in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. 'Leasing' may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre-existing lease contract, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt."

SECTION 2-14.

Said title is further amended by revising subsection (2) of Code Section 11-2A-514, relating to waiver of lessee's objections, as follows:

"(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 2-15.

Said title is further amended by revising subsection (2) of Code Section 11-2A-526, relating to lessor's stoppage of delivery in transit or otherwise, as follows:

"(2) In pursuing its remedies under subsection (1) of this Code section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

1124 (c) Such an acknowledgment to the lessee by a carrier via reshipment or as
1125 warehouseman a warehouse."

1126 **SECTION 2-16.**

1127 Said title is further amended by revising subsection (c) of Code Section 11-4-104, relating
1128 to definitions and index of definitions relating to bank deposits and collections, as follows:

1129 "(c) ~~The~~ 'Control' as provided in Code Section 11-7-106 and the following definitions in
1130 other articles of this title apply to this article:

1131 'Acceptance.' Code Section 11-3-409.

1132 'Alteration.' Code Section 11-3-407.

1133 'Cashier's check.' Code Section 11-3-104.

1134 'Certificate of deposit.' Code Section 11-3-104.

1135 'Certified check.' Code Section 11-3-409.

1136 'Check.' Code Section 11-3-104.

1137 'Good faith.' Code Section 11-3-103.

1138 'Holder in due course.' Code Section 11-3-302.

1139 'Instrument.' Code Section 11-3-104.

1140 'Notice of dishonor.' Code Section 11-3-503.

1141 'Order.' Code Section 11-3-103.

1142 'Ordinary care.' Code Section 11-3-103.

1143 'Person entitled to enforce.' Code Section 11-3-301.

1144 'Presentment.' Code Section 11-3-501.

1145 'Promise.' Code Section 11-3-103.

1146 'Prove.' Code Section 11-3-103.

1147 'Teller's check.' Code Section 11-3-104.

1148 'Unauthorized signature.' Code Section 11-3-403."

1149 **SECTION 2-17.**

1150 Said title is further amended by revising Code Section 11-4-210, relating to security interest
1151 of collecting bank in items, accompanying documents, and proceeds, as follows:

1152 "11-4-210. **Security interest of collecting bank in items, accompanying documents,**
1153 **and proceeds.**

1154 (a) A collecting bank has a security interest in an item and any accompanying documents
1155 or the proceeds of either:

1156 (1) In case of an item deposited in an account, to the extent to which credit given for the
1157 item has been withdrawn or applied;

- 1158 (2) In case of an item for which it has given credit available for withdrawal as of right,
 1159 to the extent of the credit given, whether or not the credit is drawn upon or there is a right
 1160 of charge-back; or
- 1161 (3) If it makes an advance on or against the item.
- 1162 (b) If credit given for several items received at one time or pursuant to a single agreement
 1163 is withdrawn or applied in part, the security interest remains upon all the items, any
 1164 accompanying documents, or the proceeds of either. For the purpose of this Code section,
 1165 credits first given are first withdrawn.
- 1166 (c) Receipt by a collecting bank of a final settlement for an item is a realization on its
 1167 security interest in the item, accompanying documents, and proceeds. So long as the bank
 1168 does not receive final settlement for the item or give up possession of the item or
 1169 possession or control of the accompanying documents for purposes other than collection,
 1170 the security interest continues to that extent and is subject to Article 9 of this title, but:
- 1171 (1) No security agreement is necessary to make the security interest enforceable
 1172 (subparagraph (b)(3)(A) of Code Section 11-9-203);
- 1173 (2) No filing is required to perfect the security interest; and
- 1174 (3) The security interest has priority over conflicting perfected security interests in the
 1175 item, accompanying documents, or proceeds."

1176 SECTION 2-18.

1177 Said title is further amended by revising Code Section 11-8-103, relating to rules for
 1178 determining whether certain obligations and interests are securities or financial assets, by
 1179 adding a new subsection (g) to read as follows:

1180 "(g) A document of title is not a financial asset unless subparagraph (a)(9)(iii) of Code
 1181 Section 11-8-102 applies."

1182 SECTION 2-19.

1183 Said title is further amended by revising subsection (b) of Code Section 11-9-102, relating
 1184 to definitions and index of definitions relating to secured transactions, as follows:

1185 "*(b) Definitions in other articles.* ~~Other definitions applying to this article and the Code~~
 1186 ~~sections in which they appear are~~ 'Control' as provided in Code Section 11-7-106 and the
 1187 following definitions in other articles apply to this article:

- 1188 'Applicant.' Code Section 11-5-102.
- 1189 'Beneficiary.' Code Section 11-5-102.
- 1190 'Broker.' Code Section 11-8-102.
- 1191 'Certificated security.' Code Section 11-8-102.
- 1192 'Check.' Code Section 11-3-104.

- 1193 'Clearing corporation.' Code Section 11-8-102.
- 1194 'Contract for sale.' Code Section 11-2-106.
- 1195 'Customer.' Code Section 11-4-104.
- 1196 'Entitlement holder.' Code Section 11-8-102.
- 1197 'Financial asset.' Code Section 11-8-102.
- 1198 'Holder in due course.' Code Section 11-3-302.
- 1199 'Issuer' (with respect to a letter of credit or letter of credit right). Code Section 11-5-102.
- 1200 'Issuer' (with respect to a security). Code Section 11-8-201.
- 1201 'Issuer' (with respect to documents of title). Code Section 11-7-102.
- 1202 'Lease.' Code Section 11-2A-103.
- 1203 'Lease agreement.' Code Section 11-2A-103.
- 1204 'Lease contract.' Code Section 11-2A-103.
- 1205 'Leasehold interest.' Code Section 11-2A-103.
- 1206 'Lessee.' Code Section 11-2A-103.
- 1207 'Lessee in ordinary course of business.' Code Section 11-2A-103.
- 1208 'Lessor.' Code Section 11-2A-103.
- 1209 'Lessor's residual interest.' Code Section 11-2A-103.
- 1210 'Letter of credit.' Code Section 11-5-102.
- 1211 'Merchant.' Code Section 11-2-104.
- 1212 'Negotiable instrument.' Code Section 11-3-104.
- 1213 'Nominated person.' Code Section 11-5-102.
- 1214 'Note.' Code Section 11-3-104.
- 1215 'Proceeds of a letter of credit.' Code Section 11-5-114.
- 1216 'Prove.' Code Section 11-3-103.
- 1217 'Sale.' Code Section 11-2-106.
- 1218 'Securities account.' Code Section 11-8-501.
- 1219 'Securities intermediary.' Code Section 11-8-102.
- 1220 'Security.' Code Section 11-8-102.
- 1221 'Security certificate.' Code Section 11-8-102.
- 1222 'Security entitlement.' Code Section 11-8-102.
- 1223 'Uncertificated security.' Code Section 11-8-102."

1224 **SECTION 2-20.**

- 1225 Said title is further amended by revising subsection (b) of Code Section 11-9-203, relating
- 1226 to attachment and enforceability of security interest, as follows:

"(b) *Enforceability.* Except as otherwise provided in subsections (c) through (i) of this Code section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under Code Section 11-9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Code Section 11-8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter of credit rights, or electronic documents, and the secured party has control under Code Section 11-7-106, 11-9-104, 11-9-105, 11-9-106, or 11-9-107 pursuant to the debtor's security agreement."

SECTION 2-21.

Said title is further amended by revising subsection (c) of Code Section 11-9-207, relating to rights and duties of secured party having possession or control of collateral, as follows:

"(c) *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection (d) of this Code section, a secured party having possession of collateral or control of collateral under Code Section 11-7-106, 11-9-104, 11-9-105, 11-9-106, or 11-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

SECTION 2-22.

Said title is further amended by revising Code Section 11-9-208, relating to additional duties of secured party having control of collateral, as follows:

1261 "11-9-208. **Additional duties of secured party having control of collateral.**

1262 (a) *Applicability of Code section.* This Code section applies to cases in which there is no
1263 outstanding secured obligation and the secured party is not committed to make advances,
1264 incur obligations, or otherwise give value.

1265 (b) *Duties of secured party after receiving demand from debtor.* Within ten days after
1266 receiving an authenticated demand by the debtor:

1267 (1) A secured party having control of a deposit account under paragraph (2) of
1268 subsection (a) of Code Section 11-9-104 shall send to the bank with which the deposit
1269 account is maintained an authenticated statement that releases the bank from any further
1270 obligation to comply with instructions originated by the secured party;

1271 (2) A secured party having control of a deposit account under paragraph (3) of
1272 subsection (a) of Code Section 11-9-104 shall:

1273 (A) Pay the debtor the balance on deposit in the deposit account; or

1274 (B) Transfer the balance on deposit into a deposit account in the debtor's name;

1275 (3) A secured party, other than a buyer, having control of electronic chattel paper under
1276 Code Section 11-9-105 shall:

1277 (A) Communicate the authoritative copy of the electronic chattel paper to the debtor
1278 or its designated custodian;

1279 (B) If the debtor designates a custodian that is the designated custodian with which the
1280 authoritative copy of the electronic chattel paper is maintained for the secured party,
1281 communicate to the custodian an authenticated record releasing the designated
1282 custodian from any further obligation to comply with instructions originated by the
1283 secured party and instructing the custodian to comply with instructions originated by
1284 the debtor; and

1285 (C) Take appropriate action to enable the debtor or its designated custodian to make
1286 copies of or revisions to the authoritative copy which add or change an identified
1287 assignee of the authoritative copy without the consent of the secured party;

1288 (4) A secured party having control of investment property under paragraph (2) of
1289 subsection (d) of Code Section 11-8-106 or subsection (b) of Code Section 11-9-106 shall
1290 send to the securities intermediary or commodity intermediary with which the security
1291 entitlement or commodity contract is maintained an authenticated record that releases the
1292 securities intermediary or commodity intermediary from any further obligation to comply
1293 with entitlement orders or directions originated by the secured party; ~~and~~

1294 (5) A secured party having control of a letter of credit right under Code Section 11-9-107
1295 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of
1296 the letter of credit to the secured party an authenticated release from any further
1297 obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authenticated copy which add or change an identified assignee of the authoritative copy without the consent of the secured party."

SECTION 2-23.

Said title is further amended by revising Code Section 11-9-301, relating to law governing perfection and priority of security interests, as follows:

"11-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in Code Sections 11-9-303 through 11-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this Code section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral;

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral;

(3) Except as otherwise provided in paragraph (4) of this Code section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut;

(C) Perfection of a security interest in crops; and

(D) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral; and

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral."

SECTION 2-24.

Said title is further amended by revising subsection (b) of Code Section 11-9-310, relating to when filing required to perfect security interest or agricultural lien, as follows:

"(b) Exceptions; filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under subsection (d), (e), (f), or (g) of Code Section 11-9-308;

(2) That is perfected under Code Section 11-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in subsection (a) of Code Section 11-9-311;

(4) In goods in possession of a bailee which is perfected under paragraph (1) or (2) of subsection (d) of Code Section 11-9-312;

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under subsection (e), (f), or (g) of Code Section 11-9-312;

(6) In collateral in the secured party's possession under Code Section 11-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under Code Section 11-9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter of credit rights which is perfected by control under Code Section 11-9-314;

(9) In proceeds which is perfected under Code Section 11-9-315; or

(10) That is perfected under Code Section 11-9-316."

SECTION 2-25.

Said title is further amended by revising subsection (e) of Code Section 11-9-312, relating to perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter of credit rights, and money, as follows:

"(e) Temporary perfection; new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement."

SECTION 2-26.

Said title is further amended by revising subsection (a) of Code Section 11-9-313, relating to when possession by or delivery to secured party perfects security interest without filing, as follows:

1368 "(a) *Perfection by possession or delivery.* Except as otherwise provided in subsection (b)
 1369 of this Code section, a secured party may perfect a security interest in tangible negotiable
 1370 documents, goods, instruments, money, or tangible chattel paper by taking possession of
 1371 the collateral. A secured party may perfect a security interest in certificated securities by
 1372 taking delivery of the certificated securities under Code Section 11-8-301."

1373 SECTION 2-27.

1374 Said title is further amended by revising Code Section 11-9-314, relating to perfection by
 1375 control, as follows:

1376 "11-9-314. **Perfection by control.**

1377 (a) *Perfection by control.* A security interest in investment property, deposit accounts,
 1378 letter of credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected
 1379 by control of the collateral under Code Section 11-7-106, 11-9-104, 11-9-105, 11-9-106,
 1380 or 11-9-107.

1381 (b) *Specified collateral; time of perfection by control; continuation of perfection.* A
 1382 security interest in deposit accounts, electronic chattel paper, ~~or~~ letter of credit rights, or
 1383 electronic documents is perfected by control under Code Section 11-7-106, 11-9-104,
 1384 11-9-105, or 11-9-107 when the secured party obtains control and remains perfected by
 1385 control only while the secured party retains control.

1386 (c) *Investment property; time of perfection by control; continuation of perfection.* A
 1387 security interest in investment property is perfected by control under Code
 1388 Section 11-9-106 from the time the secured party obtains control and remains perfected by
 1389 control until:

1390 (1) The secured party does not have control; and

1391 (2) One of the following occurs:

1392 (A) If the collateral is a certificated security, the debtor has or acquires possession of
 1393 the security certificate;

1394 (B) If the collateral is an uncertificated security, the issuer has registered or registers
 1395 the debtor as the registered owner; or

1396 (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement
 1397 holder."

1398 SECTION 2-28.

1399 Said title is further amended by revising subsections (b) and (d) of Code Section 11-9-317,
 1400 relating to interests that take priority over or take free of security interest or agricultural lien,
 1401 as follows:

1402 "(b) *Buyers that receive delivery.* Except as otherwise provided in subsection (e) of this
 1403 Code section, a buyer, other than a secured party, of tangible chattel paper, tangible
 1404 documents, goods, instruments, or a security certificate takes free of a security interest or
 1405 agricultural lien if the buyer gives value and receives delivery of the collateral without
 1406 knowledge of the security interest or agricultural lien and before it is perfected."

1407 "(d) *Licensees and buyers of certain collateral.* A licensee of a general intangible or a
 1408 buyer, other than a secured party, of accounts, electronic chattel paper, electronic
 1409 documents, general intangibles, or investment property other than a certificated security
 1410 takes free of a security interest if the licensee or buyer gives value without knowledge of
 1411 the security interest and before it is perfected."

1412 SECTION 2-29.

1413 Said title is further amended by revising Code Section 11-9-338, relating to priority of
 1414 security interest or agricultural lien perfected by filed financing statement providing certain
 1415 incorrect information, as follows:

1416 "11-9-338. **Priority of security interest or agricultural lien perfected by filed financing**
 1417 **statement providing certain incorrect information.**

1418 If a security interest or agricultural lien is perfected by a filed financing statement
 1419 providing information described in paragraph (5) of subsection (b) of Code
 1420 Section 11-9-516 which is incorrect at the time the financing statement is filed:

1421 (1) The security interest or agricultural lien is subordinate to a conflicting perfected
 1422 security interest in the collateral to the extent that the holder of the conflicting security
 1423 interest gives value in reasonable reliance upon the incorrect information; and

1424 (2) A purchaser, other than a secured party, of the collateral takes free of the security
 1425 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect
 1426 information, the purchaser gives value and, in the case of tangible chattel paper, tangible
 1427 documents, goods, instruments, or a security certificate, receives delivery of the
 1428 collateral."

1429 PART III

1430 SECTION 3-1.

1431 This Act applies to a document of title that is issued or a bailment that arises on or after the
 1432 effective date of this Act. This Act does not apply to a document of title that is issued or a
 1433 bailment that arises before the effective date of this Act even if the document of title or
 1434 bailment would be subject to this Act if the document of title had been issued or bailment had
 1435 arisen on or after the effective date of this Act. This Act does not apply to a right of action
 1436 that has accrued before the effective date of this Act.

SECTION 3-2.

1437

1438 A document of title issued or a bailment that arises before the effective date of this Act and
1439 the rights, documents, and interests flowing from that document or bailment are governed
1440 by any statute or other rule amended or repealed by this Act as if such amendment or repeal
1441 had not occurred and may be terminated, completed, consummated, or enforced under that
1442 statute or other rule.

SECTION 3-3.

1443

1444 This Act shall become effective upon its approval by the Governor or upon its becoming law
1445 without such approval.

SECTION 3-4.

1446

1447 All laws and parts of laws in conflict with this Act are repealed.